IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 27241 of 2005(R)

PETITIONER:

A. EZATH, S/O. LATE ALI AKBAR,
AALADU VEEDU, THEKKUMBHAGAM, PARAVOOR,
KOLLAM DISTRICT.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT:

S. ABDUL FATAH, S/O.MOHAMMED KUNJU,
T.C.NO.38/1830, CHALAI, THIRUVANANTHAPURAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN I.A.4174/03 IN O.S.250/03 OF PRL. SUB COURT, THIRUVANANTHAPURAM, DT. 12.3.04.

EXT.P2 – TRUE COPY OF I.A.1193/04 IN O.S.250/03 OF DO., DT.12.3.04

EXT.P3 – TRUE COPY OF ORDER IN I.A.1193/04 IN O.S.250/03 OF DO., DT.18.6.05.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.27241 OF 2005

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DATED THIS THE 7TH JUNE, 2007

J U D G M E N T

In this Writ Petition under Article 227 of the Constitution of India, the petitioner-defendant challenges Ext.P1 order dismissing an application filed by him for setting aside the decree which was passed ex parte against him by the trial court. He also challenges Ext.P3, another order passed by the court below on an application for restoration of I.A.No.4174 of 2003 which was dismissed for default vide Ext.P1.

2. Even though the respondent was served with notice, he has not chosen to enter appearance before this Court.

3. I do not think that the petitioner can as of right invoke the visitorial jurisdiction of this Court under Article 227 seeking to set aside Exts.P1 and P3, especially since it is seen that he has not availed alternative remedy available to him against Ext.P1. But, at the same time, it is to be noticed that this Court stayed all proceedings for execution of the decree as far back as on 26.9.2005. The respondent-decree-holder has not come forward to resist the prayers in the Writ Petition. It appears to me that the respondent is not very much opposed to the suit being adjudicated on its merits. At the same time,

the fact remains that the petitioner and his counsel were being continuously absent before the trial court even after having filed the petition to set aside the ex parte decree. It cannot be said that the court below was wrong in passing Ext.P1 order.

4. Under the above circumstances, I am inclined to set aside Exts.P1 and P3 but only on very strict conditions. Exts.P1 and P3 will stand set aside and the application filed by the petitioner for setting aside the ex parte decree will stand allowed, provided the petitioner complies with the following conditions:-

1. The petitioner pays to the respondent either directly or deposits before the court below for payment to the respondent a sum of Rs.10,000/- within one month from today.
2. The petitioner pays a sum of Rs.2500/- to the High Court Legal Services Committee.
3. The petitioner furnishes security to the satisfaction of the court below for the plaint claim within two months of receiving copy of this judgment.

If all the above conditions are complied with, both Exts.P1 and P3 will stand set aside and the learned Sub Judge will continue the

proceedings in the suit from the stage at which the petitioner was set ex parte and dispose of the suit in accordance with law.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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